

**QUARTERLY REPORT FOR GAO PROTESTS  
FOR THE PERIOD OF APRIL 01, THRU JUNE 30, 2006**

1. Number of protests filed:

	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
o AMC	16	24	20	25
o USACE	16	5	12	13
o DA Other	53	58	60	64
<b>TOTAL</b>	<b>85</b>	<b>87</b>	<b>92</b>	<b>102</b>

(Please refer to listing of protests by MACOM at end of this report)

2. Number of protest sustained/granted:

	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
o AMC	2	0	0	1
o USACE	0	0	1	1
o DA Other	0	0	1	4
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>6</b>

3. Costs:

a. Costs and fees awarded by GAO to protester:

	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
o AMC	\$0	\$0	\$0	\$0
o USACE	\$0	\$0	\$395,000	\$0
o DA Other	\$0	\$0	\$642,195	\$0
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,037,195</b>	<b>\$0</b>

b. Estimated preaward value of requirement or postaward contract cost/price:

(1) Preaward protests (estimated value of requirement):

	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
o AMC	\$870,551,589	\$80,808,245	\$526,814,262	\$1,139,095,600
o USACE	\$117,981,844	\$323,800,000	\$15,368,072	\$1,581,000
o DA Other	\$153,206,955	\$458,732,677	\$9,614,942	\$409,017,711
<b>TOTAL</b>	<b>\$1,141,740,388</b>	<b>\$863,340,922</b>	<b>\$551,797,276</b>	<b>\$1,549,694,311</b>

(2) Postaward protests (contract cost/price):

	3Q06	2Q06	1Q06	4Q05
o AMC	\$19,846,402,501	\$966,421	\$905,307,312	\$553,548,725
o USACE	\$896,839,404	\$5,000	\$68,200,283	\$105,989,120
o DA Other	\$324,481,874	\$26,116,573,715	\$14,622,434	\$13,082,134
<b>TOTAL</b>	<b>\$21,067,723,779</b>	<b>\$26,117,545,136</b>	<b>\$988,130,029</b>	<b>\$672,619,979</b>

c. Total government personnel costs resulting from protests:

	3Q06	2Q06	1Q06	4Q05
o AMC	\$192,750	\$57,863	\$225,454	\$79,815
o USACE	\$40,840	\$129,174	\$42,342	\$62,485
o DA Other	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>\$233,590</b>	<b>\$187,037</b>	<b>\$267,796</b>	<b>\$142,300</b>

4. Lessons learned, issues and trends:

**a. AMC Lessons Learned:**

**(1) TVI Corp., 297849.1:**

The protester raised three issues. The first concerned TACOM-RI's assignment of a neutral, rather than a poor, rating to the awardee under the Small Business Participation factor. The second was TACOM RI's failure to give the protester a neutral rating for Past Performance (TACOM-RI gave TVI a moderate rating based upon the experience of one of the protester's employees). The third issue was that the Source Selection Decision Document was not written in sufficient detail.

With respect to the Small Business Participation factor, TACOM-RI hoped that the case would result in a GAO ruling clarifying the Small Business Participation evaluation clause which had been written by TACOM-W. Instead, the case was decided on a factual basis concerning the rationales which TACOM-RI had used to support its 3-part decision under the TACOM-W clause. GAO rejected TACOM-RI's explanations without creating new law. The lesson learned is that it is not appropriate from a mission perspective (or otherwise) to try to defend a position based upon weak or unreasonable factual determinations regarding evaluation criteria. Avoidance of this type of action is facilitated when the evaluation criteria used in the solicitation are clearly written and are not inconsistent with themselves or other provisions of the solicitation.

In the Past Performance evaluation, GAO rejected TACOM-RI's determination that the experience of one man was sufficient for the protester to earn a moderate Past Performance rating rather than a rating of unknown risk. (For reasons not explained in the decision, GAO considered a moderate rating to be a negative rating rather than a rating similar to unknown risk or a slightly positive rating.) GAO rejected TACOM-RI's determination despite several submissions of past performance information by the protester. TVI recognized that as a corporate entity it would be evaluated as a "newly formed entity", thus earning a rating of unknown risk. However, TVI continued to make submissions of the names of additional

employees even after TACOM-RI told TVI that what it had submitted would earn this rating (unknown risk).

TACOM-RI determined that the experience of all of the proposed employees with the exception of one either was not relevant to or was not sufficiently recent to be considered under the terms of the solicitation under the Past Performance evaluation. This factor was an essential part of GAO's decision. The experience of one employee met these solicitation criteria, and TACOM-RI used this employee and his experience to (in my opinion) reasonably give TVI a rating other than unknown risk, namely a moderate Past Performance rating. We believe that GAO exceeded the bounds of its own scope of review of agency determinations (that they are reasonable and within the scope of the solicitation and applicable statutes and regulations) in holding that TACOM-RI's determination regarding TVI's Past Performance rating was unreasonable. The lesson learned is that GAO may, upon occasion, take it upon itself to go beyond what the procurement team feels is reasonable (under its own standard of review), and substitute its own judgment for that of the Source Selection Authority. For this reason "borderline" decisions (decisions which could go either way) must be carefully scrutinized, but certainty of result can never be assumed.

GAO did not decide the third issue concerning the reasonableness of the Source Selection Decision Document.

**b. USACE Lessons Learned: None**

**c. DA Others – Lessons Learned:**

**(1) KBR Government and Infrastructure, B-298333:**

KBR challenged an award for fuel support operations at two locations in Kuwait. The solicitation essentially required the operation of two "tank farms" which disperse fuel to customers in the theater. Among other things, KBR complained that its past performance evaluation was flawed and that the offerors were allowed to compete for different requirements. The past performance evaluation was indeed flawed, and CAD recommended corrective action on that basis. We also noticed that the Defense Base Act (DBA) clause was not in the solicitation, although it was required to be.

Lesson Learned: This corrective action is ongoing. The biggest lesion was that the DBA clause is required for overseas service contracts. The DBA essentially requires insurance that serve the same function as workers compensation in CONUS. Failure to include the clause skewed the competitive playing field, and potentially opened the Government to a claim for the costs of DBA insurance following award.

**(2) Dispatch Services, B-297649.4:**

Dispatch Services challenged multiple awards made by SDDC for "lanes" of freight hauling within CONUS. Each "lane" is an agreement to haul freight along a specific route. Dispatch Services complained that numerous awardees did not have operating certificates within 30 days of award, as required by the solicitation. The GAO dismissed, since compliance with the certificate requirement was not evaluated during the source selection, but was instead a condition of performance.

Lesson Learned: The GAO's authority to review protests is strictly limited by CICA to source selections. The GAO has no authority to review compliance with contract terms during performance.

### **(3) Veteran Enterprise Technology Services, LLC, B-298201:**

Veteran challenged an award of a contract for various support services required by the US Army Rapid Equipping Force. Veteran alleged that the awardee was not a small, disabled-veteran owned business, and that the awardee has an improper OCI. The GAO dismissed the size challenge because it does not review such matters. It dismissed the OCI challenge as untimely because prior to award, Veteran specifically raised this OCI issue with the contracting officer and was told unequivocally that its allegation was baseless.

Lesson Learned: The general rule is that any OCI allegation made before award is premature. The exception is where, as here, the agency tells a protester before award that it considers a specific firm to be eligible for award.

### **(4) The Pasha Group, B-298230, et seq:**

Pasha challenged an award for storage of privately owned vehicles on Oahu. The vehicles in question belong to the 25<sup>th</sup> ID Soldiers who are deployed. Pasha challenged the technical proposal of the awardee and its past performance evaluation. Pasha also alleged that the agency conducted improper discussions with the awardee. After a GAO telephonic conference, the agency agreed to take corrective action.

Lesson Learned: The contemporary record suggested strongly that communication with the awardee continued after receipt of RFPs. Although the contracting officer acknowledged such communication occurred, she said they were unilateral from the awardee and she did not rely upon them in making her source selection decision. This was undercut when she admitted that her supervisor directed her, after receipt of RFPs, to secure assurances of timely performance from the awardee, and the supervisor did not approve the Post Negotiation Memo (which served as the SSDD) until such assurances were received. Another concern was that the awardee's technical evaluation was based upon the minimum order quantity, which was much less than the stated monthly requirement in the PWS. This raised concern that the offerors were not all held to the same performance standard. The contracting officer was unable to dispel this concern during the conference.

### **5. Protest filed by major commands (HCAs):**

**a. AMC, GAO protests:**

<b>AMC (GAO)</b>	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
AFSC	1	4	4	6
ANDA	0	0	0	0
ARDEC	0	0	0	0
ARL	0	0	0	0
ATCOM	0	0	0	0
AMCOM	4	6	4	6
AMCOM (AATD)	0	0	0	0
AMC-SBIR	0	0	0	1
BELVOIR	0	0	0	0
BGAD	0	0	0	0
CACWOO	0	0	0	0
CCAD	0	0	0	0
CBD COM	0	0	0	0
CECOM	3	3	1	4
DESCOM (Letterkenny)	0	0	0	0
DPG	0	0	0	0
JMC	0	0	0	0
IOC	0	0	0	0
LEAD	0	0	0	0
MCALESTER	0	0	0	0
MICOM	0	0	0	0
NATICK	0	0	0	0
OSC	0	0	0	0
PBA	0	0	0	0
RDECOM	3	1	4	2
RMA	0	0	0	0
RRAD	0	0	0	0
SBCCOM	0	0	0	0
SSCOM	0	0	0	0
TACOM	5	10	7	6
TECOM	0	0	0	0
TECOM-OPTEC	0	0	0	0
TECOM-Dungway	0	0	0	0
TECOM-Yuma Proving G	0	0	0	0
USMA	0	0	0	0
<b>Total</b>	<b>16</b>	<b>24</b>	<b>20</b>	<b>25</b>

**b. USACE, GAO protests:**

<b>USACE (GAO) TOTAL</b>	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
ALASKA	0	0	1	0
ALBUQUERQUE	0	0	0	0
BALTIMORE	0	0	0	0
BUFFALO	0	0	0	0
CHARLESTON	0	0	0	0
CHICAGO	0	0	0	0
DETROIT	0	0	0	0
EUROPE	0	0	1	0
FAR EAST	0	0	0	0
FORT WORTH	1	0	0	3
GALVESTON	0	0	0	0
GULF REGION	1	0	0	0
HEADQUARTERS	0	0	0	0
HONOLULU	0	0	0	0
HUMPHREYS ENG CNTR	0	0	0	0
HUNTINGTON	2	0	1	0
HUNTSVILLE	0	0	0	0
JACKSONVILLE	0	0	1	0
JAPAN	0	0	0	0
KANSAS CITY	2	0	2	0
LOS ANGELES	0	0	0	0
LOUISVILLE	0	0	2	2
MEMPHIS	0	0	0	0
MOBILE	0	0	0	0
NASHVILLE	0	0	0	0
NEW ENGLAND	1	2	0	1
NEW YORK	0	0	0	0
NEW ORLEANS	1	0	0	0
NORFOLK	0	0	0	0
OMAHA	0	0	0	1
PACIFIC OCEAN DIV	0	0	0	0
PHILADELPHIA	0	0	1	2
PITTSBURGH	0	0	0	0
PORTLAND	0	0	0	0
ROCK ISLAND	0	0	0	0
SACRAMENTO	0	1	0	0
SAN FRANCISCO DISTRICT	2	0	0	2
SAVANNAH	1	0	0	0
SEATTLE	0	0	0	0
ST LOUIS	0	0	1	0
ST PAUL	0	0	0	0
TRANSATLANTIC	0	0	2	1
TRANSATLANTIC (EUROPE)	0	0	0	0
TULSA	0	0	0	0
VICKSBURG DISTRICT	5	2	0	1
<b>Total</b>	<b>16</b>	<b>5</b>	<b>12</b>	<b>13</b>

**c. DA Other, GAO protests:**

<b>DA (GAO) TOTAL</b>	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
N REG	3	6	15	6
S REG	9	6	8	12
MEDCOM	4	4	6	6
CCE	2	3	0	0
NGB	4	11	6	7
DCCW	0	0	0	4
EUSA	0	0	0	0
USASOC	1	1	2	0
USACFSC	0	0	0	0
USAREC	0	0	0	0
ITEC4	6	1	6	7
PCO-IRAQ	5	10	5	11
USCCK	2	4	2	0
USASMDC	0	0	0	0
USARPARC	3	0	0	0
DETRICK	4	2	3	3
MDA	0	2	0	0
SDDC	1	4	3	0
USARO	0	0	0	0
USAREUR	0	1	2	0
INSCOM	1	0	0	0
DIA	7	1	1	4
MDW	0	0	0	0
ACA-SW	1	2	1	0
Kuwait	0	0	0	1
ACA-Korea	0	0	0	3
<b>DA (GAO) TOTAL</b>	<b>53</b>	<b>58</b>	<b>60</b>	<b>64</b>

**QUARTERLY REPORT FOR AGENCY LEVEL PROTESTS  
FOR THE PERIOD OF APRIL 01 THRU JUNE 30, 2006**

6. Number of protest filed:

	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
o AMC	7	7	7	3
o USACE	6	18	11	16
o DA Other	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>13</b>	<b>25</b>	<b>18</b>	<b>19</b>

(Please refer to listing of protests by MACOMs at the end of this report)

7. Number of protest sustained/granted:

	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
o AMC	0	0	0	0
o USACE	0	0	0	0
o DA Other	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

8. Costs:

a. Costs and fees awarded to protester:

	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
o AMC	\$0	\$0	\$0	\$0
o USACE	\$0	\$0	\$0	\$0
o DA Other	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

b. Estimated preaward value of requirement or postaward contract/price:

(1) Preaward estimated value of requirement:

	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
o AMC	\$73,489,192	\$0	\$52,806,198	\$2,751,507
o USACE	\$94,249,270	\$115,518,055	\$6,948,745	\$20,269,879
o DA Other	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>\$167,738,462</b>	<b>\$115,518,055</b>	<b>\$59,754,943</b>	<b>\$23,021,386</b>



(2) Post award protest (contract cost/price)

	3Q06	2Q06	1Q06	4Q05
o AMC	\$66,360,570	\$7,323,060	\$4,583,400	\$4,583,400
o USACE	\$13,300	\$49,476,155	\$1,710,059	\$1,710,059
o DA Other	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>\$ 66,373,870</b>	<b>\$ 56,799,215</b>	<b>\$ 6,293,459</b>	<b>\$ 6,293,459</b>

c. Total government personnel costs resulting from protests:

	3Q06	2Q06	1Q06	4Q05
o AMC	\$20,982	\$2,084	\$64,342	\$14,710
o USACE	\$39,109	\$28,692	\$65,419	\$26,765
o DA Other	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>\$60,091</b>	<b>\$30,776</b>	<b>\$129,761</b>	<b>\$41,475</b>

9. Lessons learned, issues and trends:

**a. AMC- Lessons Learned:**

**(1) Specialty Bar Products, AMC 140306:**

When requesting a size determination from the Small Business Administration, make sure that the size determination was made on the correct offeror and that the SBA understood the letter that was forwarded to them for this request. Prior to setting a solicitation aside for small business, make sure that the criteria required for setting the solicitation aside is present and make sure you document the basis for your determination as to the number of potential small businesses that may participate in the procurement as well as the basis for your fair market price determination.

**(2) Octal Corporation, AMC 170606:**

This protest was a result of the procurement package being submitted through to the wrong command. The SNAP Division is only established to handle Simplified Non-Standard Acquisitions that do not have a technical data package or QPL. It was determined that this procurement should have been handled by DLA. To remedy this situation in the future, the SNAP software has since been programmed to reject these part numbers and return them to New Cumberland should a Case Manager inadvertently try to resubmit the procurement package to SNAP in the future. All future requirements will be procured through DLA and handled accordingly.

**b. USACE Lessons Learned:** None.

**c. Other DA Lessons Learned:** Not applicable - will be submitted on fiscal year ending basis.

10. Protest filed by major commands (HCAs):

**a. AMC, Agency protest:**

<b>AMC (Agency) TOTAL</b>	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
ACLAL	0	0	0	0
AFSC	0	0	0	0
ANDA	0	0	0	0
ARDEC	0	0	0	0
ARL	0	0	0	0
ATCOM	0	0	0	0
AMCOM	0	0	2	2
AMCOM (AATD)	0	0	0	0
BGAD	0	0	0	0
CACWO	0	0	0	0
CCAD	0	0	0	0
CBDCOM	0	0	0	0
CECOM	2	0	1	1
DESCOM (Letterkenny)	0	0	0	0
DPG	0	0	0	0
JMC	0	0	0	0
IOC	0	0	0	0
LEAD	0	0	0	0
MCALESTER	0	0	0	0
MICOM	0	0	0	0
NATICK	0	0	0	0
OSC	0	0	0	0
PBA	0	0	0	0
RDECOM	1	0	0	0
RMA	0	0	0	0
RRAD	0	0	0	0
SBCCOM	0	0	0	0
SSCOM	0	0	0	0
TACOM	4	7	4	0
TECOM	0	0	0	0
TECOM-OPTEC	0	0	0	0
TECOM-Dungway	0	0	0	0
TECOM-Yuma Proving G	0	0	0	0
UNKNOWN	0	0	0	0
USMA	0	0	0	0
<b>Total</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>3</b>

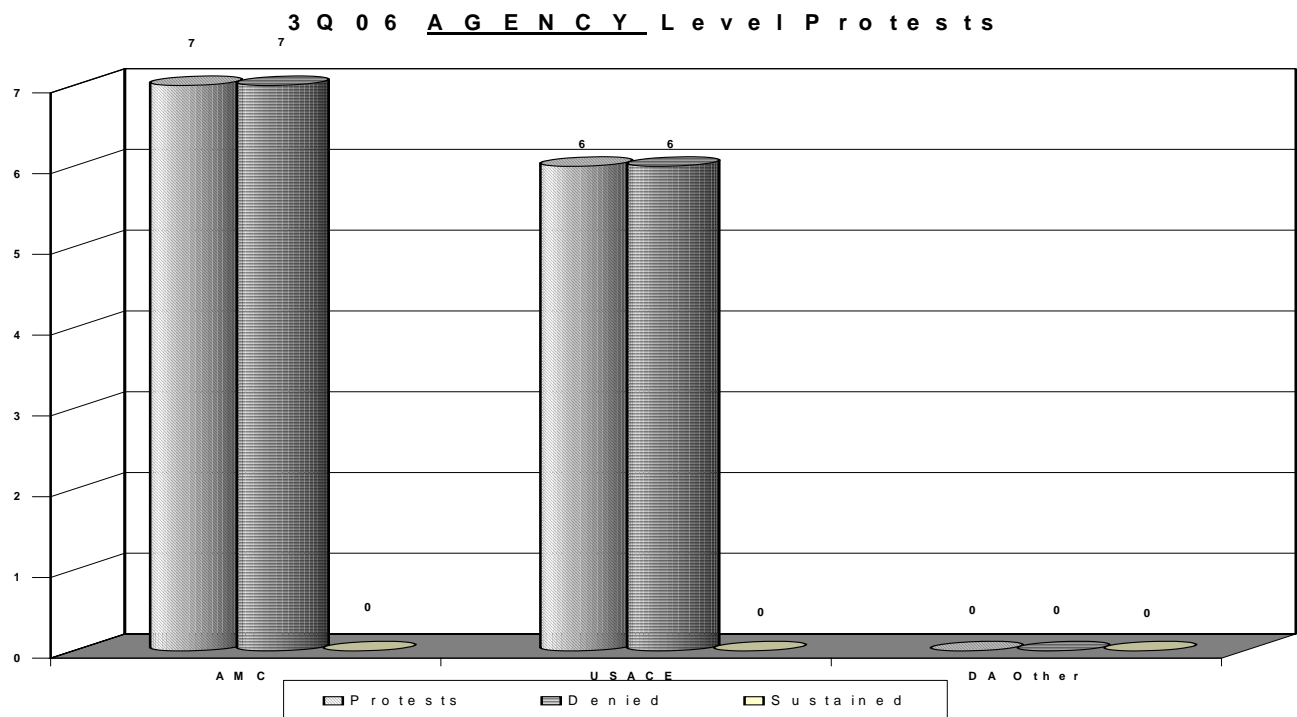
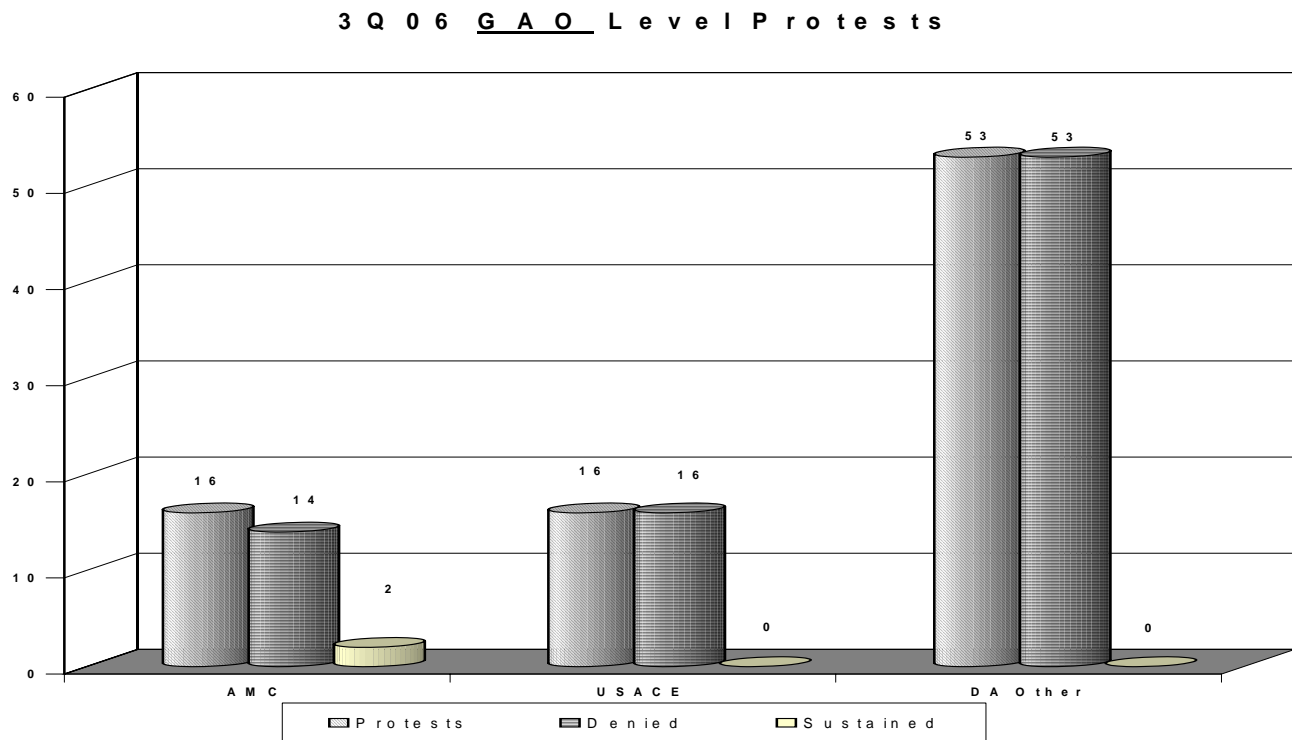
**b. USACE, Agency protest:**

<b>USACE (Agency) TOTAL</b>	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
ALASKA	0	1	0	1
ALBUQUERQUE	0	0	1	0
BALTIMORE	0	3	0	2
BUFFALO	0	0	0	0
CHARLESTON	0	0	0	0
CHICAGO	0	0	0	0
DETROIT	0	0	0	0
EUROPE	0	0	0	0
FAR EAST	0	0	0	0
FORT WORTH	0	0	0	0
GALVESTON	0	0	4	0
HEADQUARTERS	0	0	0	0
HONOLULU	0	0	0	0
HUMPHREYS ENG CNTR	0	0	0	0
HUNTINGTON	0	0	0	1
HUNTSVILLE	0	0	0	0
JACKSONVILLE	0	0	2	0
JAPAN	0	0	0	0
KANSAS CITY	0	1	0	0
LITTLE ROCK	0	0	0	0
LOS ANGELES	0	0	0	0
LOUISVILLE	0	0	0	0
MEMPHIS	0	0	0	1
MOBILE	0	0	0	0
NASHVILLE	0	0	0	0
NEW ENGLAND	0	0	0	0
NEW YORK	1	0	0	3
NEW ORLEANS	1	3	1	0
NORFOLK	0	0	1	1
OMAHA	0	0	0	0
PACIFIC OCEAN DIV	0	0	0	0
PHILADELPHIA	0	0	1	1
PITTSBURGH	0	0	0	0
PORTLAND	0	0	0	0
ROCK ISLAND	0	0	0	0
SACRAMENTO	1	1	0	0
SAN FRANCISCO	2	0	0	4
SAVANNAH	0	3	0	0
SEATTLE	1	1	0	1
ST LOUIS	0	0	0	0
ST PAUL	0	0	0	0
TRANSATLANTIC	0	1	0	0
TRANSATLANTIC (EUROPE)	0	0	0	0
TULSA	0	0	0	1
VICKSBURG	0	2	1	0
WALLA WALLA	0	0	0	0
WILMINGTON	0	2	0	0
<b>Total</b>	<b>6</b>	<b>18</b>	<b>11</b>	<b>16</b>

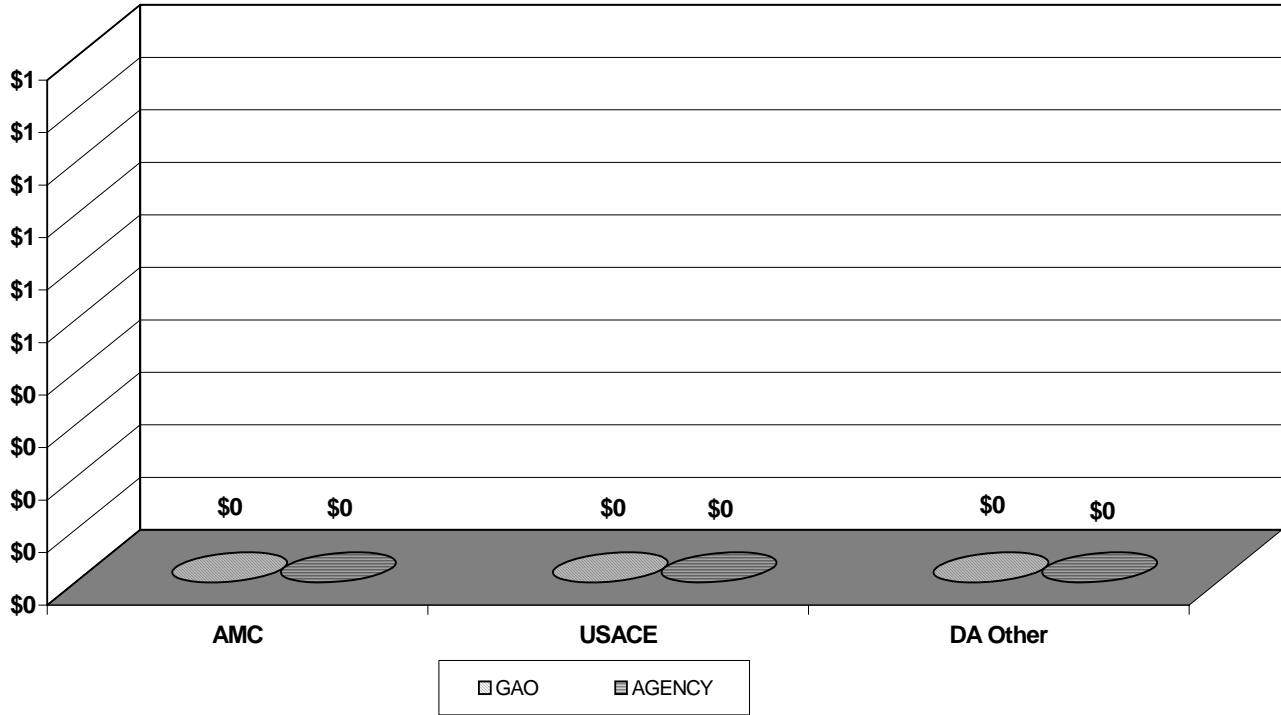
**c. DA, Agency protest:**

<b>DA (Agency) TOTAL</b>	<b>3Q06</b>	<b>2Q06</b>	<b>1Q06</b>	<b>4Q05</b>
N REG	N/A	N/A	N/A	N/A
S REG	N/A	N/A	N/A	N/A
MEDCOM	N/A	N/A	N/A	N/A
NGB	N/A	N/A	N/A	N/A
DCCW	N/A	N/A	N/A	N/A
EUSA	N/A	N/A	N/A	N/A
USSOC	N/A	N/A	N/A	N/A
USACFSC	N/A	N/A	N/A	N/A
USARC	N/A	N/A	N/A	N/A
ITEC4	N/A	N/A	N/A	N/A
USASDC	N/A	N/A	N/A	N/A
USARPARC	N/A	N/A	N/A	N/A
DETRICK	N/A	N/A	N/A	N/A
MDA	N/A	N/A	N/A	N/A
MTMC	N/A	N/A	N/A	N/A
USARO	N/A	N/A	N/A	N/A
USAREUR	N/A	N/A	N/A	N/A
INSCOM	N/A	N/A	N/A	N/A
DIA	N/A	N/A	N/A	N/A
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

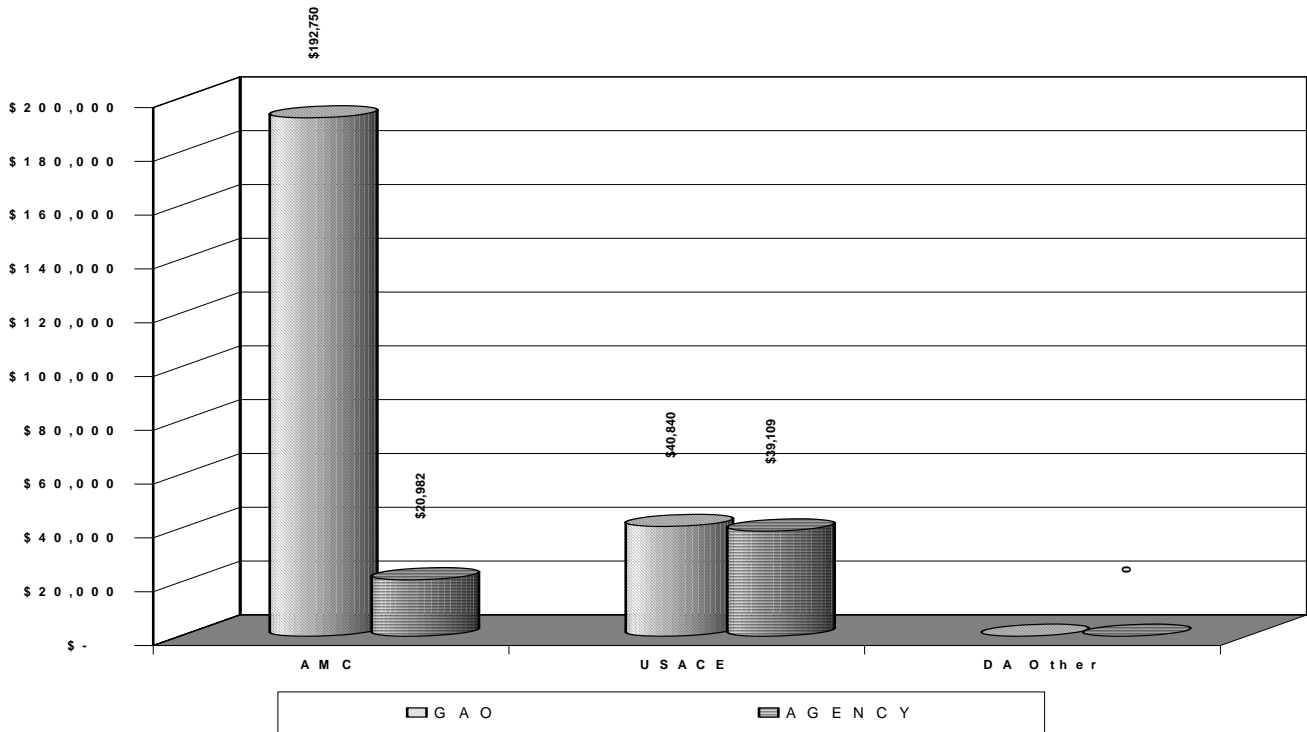
11. Graphs on GAO & Agency level protests filed and associated costs/fees:



# 3Q06 GAO & AGENCY Level COSTS & FEES AWARDED TO CONTRACTOR



## 3 Q 0 6 G A O & A G E N C Y L e v e l P e r s o n n e l C o s t s



# 3 Q 0 6 G A O & A G E N C Y L e v e l P o s t - A w a r d e d C o s t s

